

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ALFREDO MEJIA,  
Plaintiff,  
v.  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
Defendant.

Case No. CV 15-00600-RAO

**MEMORANDUM OPINION AND  
ORDER**

**I.**

**INTRODUCTION**

Plaintiff Alfredo Mejia (“Plaintiff”) challenges the Commissioner’s denial of his application for a period of disability and disability insurance benefits (“DIB”) following an administrative law judge’s (“ALJ”) decision that he was not under a disability, as defined by the Social Security Act. Administrative Record (“AR”) 33. For the reasons stated below, the Commissioner’s decision is REVERSED and the action is REMANDED for further proceedings consistent with this Order.

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II.

## **PROCEEDINGS BELOW**

3 On April 24, 2012, Plaintiff applied for DIB, alleging disability beginning  
4 February 9, 2012 (his alleged onset date (“AOD”)).<sup>1</sup> AR 20. Plaintiff’s claim was  
5 denied initially on November 28, 2012, and upon reconsideration on May 20, 2013.  
6 *Id.* On June 12, 2013, Plaintiff filed a written request for hearing, which took place  
7 on November 19, 2013. *Id.* Represented by counsel, Plaintiff appeared and  
8 testified at the hearing, as did an impartial vocational expert (“VE”). *Id.* On March  
9 18, 2014, the ALJ found that Plaintiff was not under a disability, as defined in the  
10 Social Security Act.<sup>2</sup> *Id.* at 33-34. The ALJ’s decision became the Commissioner’s  
11 final decision when the Appeals Council denied Plaintiff’s request for review. *Id.*  
12 at 1-9. Plaintiff filed the instant action in this Court on April 16, 2015. Dkt. No. 1.

The ALJ followed a five-step sequential evaluation process to assess whether Plaintiff was disabled. 20 C.F.R. §§ 404.1520, 416.920; *see also Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged in substantial gainful activity during the period from his AOD through December 31, 2013, his date last insured. AR 22. At **step two**, the ALJ found that Plaintiff has the following severe impairments: status post right shoulder surgery with frozen shoulder; left shoulder impingement; right knee degenerative joint disease; bilateral thigh infections; poorly controlled diabetes mellitus, type I; depression; anxiety; and degenerative disc disease. *Id.* at 23. At **step three**, the

<sup>1</sup> Plaintiff's AOD was originally October 20, 2008, but his AOD was amended to accommodate a prior unfavorable determination rendered on February 8, 2012 that he was appealing. AR 20, 84-97. The ALJ stated that he would "not consider the claimant's alleged disability herein prior to February 8, 2012. ... Any evidence discussed prior to February 8, 2012, is for background purposes only." *Id.* at 20.

<sup>26</sup> Persons are “disabled” for purposes of receiving Social Security benefits if they  
<sup>27</sup> are unable to engage in any substantial gainful activity owing to a physical or  
<sup>28</sup> mental impairment expected to result in death, or which has lasted or is expected to  
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 ALJ found that Plaintiff did not have an impairment or combination of impairments  
2 “that met or medically equaled the severity of one of the listed impairments in 20  
3 CFR Part 404, Subpart P, Appendix 1.” *Id.* (citations omitted). At **step four**, the  
4 ALJ found that, through December 31, 2013, Plaintiff had the residual functional  
5 capacity (“RFC”) to:

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[P]erform sedentary work as defined in 20 CFR 404.1567(a) in  
so much as he could occasionally lift and carry ten pounds,  
frequently lift and carry ten pounds; stand/walk two out of eight  
hours; sit for six out of eight hours; postural activities would be  
all occasional; no climbing of ladders, ropes or scaffolds;  
occasional reaching over shoulder level with the right and left  
upper extremities; frequent for all other reaching, pushing, and  
pulling bilaterally; should avoid concentrated exposure to  
extreme cold; no work at unprotected heights or dangerous  
machinery; and is limited to simple tasks with simple work  
related decisions, and object oriented (i.e. no requirement for  
reading detailed instructions or detailed forms).

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*Id.* at 25. Given his RFC, Plaintiff was deemed unable to perform his past relevant work. *Id.* at 32. At **step five**, however, the ALJ found that there are other jobs that Plaintiff could have performed, and thus found that he was not under a disability, as defined by the Social Security Act. *Id.* at 32-34.

### III.

#### STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are supported by substantial evidence, and if the proper legal standards were applied. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’ means more than a mere scintilla, but less than a preponderance; it is such relevant evidence as a reasonable person might accept as adequate to support a conclusion.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*

1        *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial  
 2 evidence requirement “by setting out a detailed and thorough summary of the facts  
 3 and conflicting clinical evidence, stating his interpretation thereof, and making  
 4 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

5           “[T]he Commissioner's decision cannot be affirmed simply by isolating a  
 6 specific quantum of supporting evidence. Rather, a court must consider the record  
 7 as a whole, weighing both evidence that supports and evidence that detracts from  
 8 the Secretary's conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.  
 9 2001) (citations and internal quotations omitted). “‘Where evidence is susceptible  
 10 to more than one rational interpretation,’ the ALJ's decision should be upheld.”  
 11 *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v.*  
 12 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see also Robbins*, 466 F.3d at 882  
 13 (“If the evidence can support either affirming or reversing the ALJ's conclusion, we  
 14 may not substitute our judgment for that of the ALJ.”). The Court may review only  
 15 “the reasons provided by the ALJ in the disability determination and may not affirm  
 16 the ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630  
 17 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

#### 18                  IV.

#### 19                  DISCUSSION

20           Plaintiff raises two issues: (1) whether the ALJ erred in giving “great weight”  
 21 to two State agency psychological consultants’ opinions, but then omitting portions  
 22 of their opinions from Plaintiff’s RFC; and (2) whether the ALJ erred in accepting a  
 23 VE’s testimony without inquiring about an alleged conflict between the testimony  
 24 and the Dictionary of Occupational Titles (“DOT”). Plaintiff’s Memorandum in  
 25 Support of Complaint (“Pl. Memo.”) at 5-9; Plaintiff’s Reply (“Pl. Reply”) at 3-4.

#### 26                  A. State Agency Psychological Consultants’ Opinions

27           Plaintiff contends that the ALJ erred by not including in his RFC assessment  
 28 the opinions of State agency psychological consultants Jeanne Buyck, Ph.D. (“Dr.

1 Buyck”), and P. M. Balson, M.D. (“Dr. Balson”), that Plaintiff could do “simple 1-  
2 step tasks,” and was “moderately limited” in his ability to properly respond to  
3 changes in the work setting. *See* Pl. Memo. at 8-9; Pl. Reply at 4; AR 111-12, 130.

4 **1. Applicable Law**

5 ALJs are not bound by State Agency consultant findings, but must consider  
6 them (and other opinions) “as opinion evidence, except for the ultimate [disability]  
7 determination[,]” because such specialists are “highly qualified ... experts in Social  
8 Security disability evaluation.” 20 C.F.R. §§ 404.1527(e)(2)(i), 416.927(e)(2)(i).  
9 Unless a treating source opinion is given controlling weight, ALJs must explain the  
10 weight given to consultants. 20 C.F.R. §§ 404.1527(e)(2)(ii), 416.927(e)(2)(ii); *see*  
11 *also* Social Security Ruling (“SSR”) 96-6p, 1996 WL 374180, at \*1 (consultants’  
12 findings as to the nature and severity of a person’s impairments must be considered  
13 as expert opinion evidence of non-examining sources, and the weight given to such  
14 opinions must be explained). In assessing RFC, an ALJ “must always consider and  
15 address medical source opinions.” SSR 96-8p, 1996 WL 374184, at \*7. If an RFC  
16 assessment conflicts with a medical source opinion, the ALJ must explain why the  
17 opinion was not adopted. *Id.*; *see also* 20 C.F.R. §§ 404.1527(e)(2), 416.927(e)(2);  
18 Failure to do so constitutes error. *See Cardoza v. Astrue*, 2011 WL 1211469, at \*1  
19 (C.D. Cal. Mar. 29, 2011) (holding that it was error for the ALJ to find the opinions  
20 of the consultants persuasive, and accord them substantial weight, but exclude from  
21 his RFC assessment without providing reasons for doing so).

22 **2. Relevant Facts**

23 On November 27, 2012, Dr. Buyck completed a mental RFC assessment for  
24 Plaintiff’s initial level Disability Determination Explanation. AR 110-12. Relevant  
25 to this matter, Dr. Buyck found that Plaintiff “would be able to perform simple 1-2  
26 step tasks, on an ongoing basis[,]” and was “moderately limited” in his “ability to  
27 respond appropriately to changes in the work setting.” *Id.* at 111-12. Dr. Balson  
28 repeated those findings at the reconsideration level on May 15, 2013. *Id.* at 130.

1       The ALJ gave their opinions great weight, finding that they were “consistent  
2 with the claimant’s history of situational depression, high GAF scores, and lack of  
3 recent mental health treatment.” *Id.* at 31-32. However, as noted above, in his final  
4 RFC assessment the ALJ limited Plaintiff to “simple tasks with simple work related  
5 decisions, and object oriented (i.e. no requirement for reading detailed instructions  
6 or detailed forms)[,]” not simple, one to two step tasks, and included no limitations  
7 related to Plaintiff’s ability to properly respond to work setting changes. *Id.* at 25.

8           **3. Task Performance Assessments**

9       Plaintiff contends that the “simple tasks with simple work related decisions”  
10 limitation assessed by the ALJ conflicts with Dr.’s Buyck and Balson’s “one to two  
11 step tasks” assessment, and that the ALJ erred by not stating “any reason, let alone  
12 a specific and legitimate reason why that limitation was omitted.” Pl. Reply. at 4.  
13 Specifically, Plaintiff contends that “despite giving full weight to the opinions of  
14 the State Agency physician[s], the ALJ did not include the 1-2 step task limitation  
15 in the ultimate functional calculus, thus the [RFC] was under inclusive.” *Id.*

16       Plaintiff’s argument centers on the DOT’s General Education Development  
17 Reasoning Levels which gauge the minimal ability needed to complete a job’s tasks  
18 and range from Level 1 (simplest) to Level 6 (most complex). *Rounds v. Comm’r  
19 Soc. Sec. Admin.*, 795 F.3d 1177, 1182 (9th Cir. 2015); *Meissl v. Barnhart*, 403 F.  
20 Supp. 2d 981, 983 (C.D. Cal. 2005); DOT (4th ed. 1991), App. C, § III. The ALJ  
21 found that Plaintiff could do jobs in two levels: table worker (DOT # 739.687-182,  
22 *Level 1*), automatic grinding machine operator (DOT # 690.685-194, *Level 2*), and  
23 printed circuit layout taper (DOT # 017.684-101, *Level 2*). AR 33. *Level 1* requires  
24 an ability to “carry out simple one- to two-step instructions[,]” and to “[d]eal with  
25 standardized situations with occasional or no variables in or from these situations  
26 encountered on the job.” DOT, App. C, § III. *Level 2* requires an ability to “carry  
27 out detailed but uninvolved written or oral instructions[,]” and to “[d]eal with  
28 problems involving a few concrete variables in or from standardized situations. *Id.*

As Plaintiff notes, the Ninth Circuit has recently said that a “one to two step tasks” RFC limitation is “close[ly] similar[] … [to] *Level One* reasoning.” *Rounds*, 795 F.3d at 1182-83 (emphasis in original). Thus, it is reasonable to conclude that Dr.’s Buyck and Balson’s “simple 1-2 step tasks” limitation suggests that they felt that Plaintiff should be precluded from all but *Level 1* jobs. It *does not* necessarily follow, however, that the ALJ’s RFC assessment conflicts with their opinions. To the contrary, the ALJ’s final RFC assessment limits Plaintiff to “simple tasks with simple work related decisions, and object oriented (i.e. *no requirement for reading detailed instructions or detailed forms*).” *Id.* at 25 (emphasis added). The detailed instructions limitation conflicts with *Level 2*, which requires an ability to carry out detailed *written* instructions, DOT, App. C, § III, because an ability to *carry out* detailed written instructions implies an ability to *read* detailed instructions, which the ALJ’s RFC assessment precludes. Thus, the ALJ’s limitation is consistent with *Level 1* reasoning, and does not conflict with Dr.’s Buyck and Balson’s opinion.

The Court does find that Plaintiff’s RFC precludes performance of the *Level 2* jobs identified by the ALJ, *i.e.*, printed circuit layout taper and automatic grinding machine operator. AR 33; *see also* Pl. Memo. at 8 (noting those jobs require Level 2 reasoning, and arguing that the demands of Level 2 conflict with a one to two step tasks limitation). However, that error is harmless because the ALJ also identified a *Level 1* reasoning job (table worker) which Plaintiff could perform. AR 33; *Stout v. Comm’r of Soc. Sec.*, 454 F.3d 1050, 1055 (9th Cir. 2006) (ALJ errors are harmless when they are inconsequential to a non-disability finding); *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005) (an ALJ’s decision will not be reversed for harmless error); *Curry v. Sullivan*, 925 F.2d 1127, 1131 (9th Cir. 1991) (harmless error rule applies to review of ALJ decisions regarding disability).

#### **4. Work Setting Adaptation Limitation**

Plaintiff also argues that because “[b]oth [Dr. Buyck and Dr. Balson] found [him] moderately limited in his ability to respond appropriately to changes in the

1 work setting[,] ... [t]he ALJ's functional calculus is under inclusive because it does  
 2 not capture *any* adaptation limitation." See Pl. Memo. at 8 (emphasis in original).  
 3 The ALJ accorded "great weight" to Dr.'s Buyck and Balson's opinions, but did not  
 4 include in his RFC assessment their opinion that Plaintiff is moderately limited in  
 5 his ability to properly respond to changes in the work setting—an implicit rejection  
 6 of that opinion without providing a reason for doing so. This constitutes error. See  
 7 *Cardoza*, 2011 WL 1211469, at \*1. However, the Court finds that this error is also  
 8 harmless. As noted above, *Level 1* reasoning jobs, such as the "table worker" job  
 9 identified by the VE and noted in the ALJ's decision, only deal with "standardized  
 10 situations with *occasional or no variables in or from these situations* encountered  
 11 on the job." DOT, App. C, § III (emphasis added). The ALJ's failure to include or  
 12 reject the adaptation limitation was harmless because Plaintiff is only "moderately,"  
 13 not entirely, limited in his ability to properly respond to work setting changes, and  
 14 would, at most, encounter "occasional" variables from standardized job situations.

15 **B. Conflict Between VE Testimony and DOT**

16 Plaintiff also argues that the ALJ's step five determination was not supported  
 17 by substantial evidence because his RFC assessment limited Plaintiff to "occasional  
 18 reaching over shoulder level[,"] the jobs identified require "frequent" reaching, and  
 19 the ALJ failed to "obtain[] a reasonable explanation regarding the [VE's] deviation  
 20 from the DOT." See Pl. Memo. at 6-7. The Court agrees.

21 At the administrative hearing, the ALJ presented the VE with a hypothetical  
 22 individual sharing the same RFC as Plaintiff:

23 Q Now Ms. Matildy, I'm going to give you a couple of  
 24 hypotheticals here. Number one, I want you to assume a  
 25 hypothetical individual with the claimant's education, training, and  
 26 work experience who is limited to, under hypothetical number one,  
 27 occasionally lift and carry 10 pounds, frequently lift and carry 10,  
 28 stand and walk with normal breaks for a total of two of an eight  
 hour day, sit with normal breaks for a total of six of an eight hour  
 day, posture limitations are occasional, no climbing ladders, ropes,

1 and scaffolds, now occasional for right left extremity -- upper  
2 extremity reaching over shoulder level, and frequent for all other  
3 reaching, pushing, and pulling bilaterally with the upper  
4 extremities, avoid concentrated exposure to extreme cold, no work  
5 at unprotected heights or dangerous machinery, we're going to  
6 limit that individual to simple tasks with simple work-related  
7 decisions, object-oriented and object-oriented so that there's no  
8 requirement for reading detailed instructions or filling out detailed  
9 forms. So that would be hypothetical one. Were you able to  
10 follow that?

11 A Yes.

12 Q Okay. So based upon hypothetical one, would the  
13 claimant be able to perform past work?

14 A He could not perform the past work.

15 Q Okay. Are there any occupations an individual with the  
16 given profile residual function of capacity could perform?

17 A Unskilled sedentary work as a table worker, which is  
18 visual inspection, DOT 739.687-182, sedentary, unskilled SVP 2.  
19 Nationally approximately 82,000 of these positions exist and did  
20 you want local?

21 Q No, that's okay.

22 A Okay. Also at the sedentary unskilled level would be  
23 work as a printed circuit layout taper, DOT 017.684-010. It is  
24 sedentary, unskilled, SVP 2. Nationally approximately 12,000 of  
25 these positions exist.

26 Q Okay.

27 A The --

28 Q Oh, go ahead.

A Oh. There would be work as an automatic grinding  
machine operator, DOT 690.685-194. It is sedentary, unskilled,  
SVP 2. Nationally approximately 33,000 of these positions exist.

...

22 ALJ: Okay. Now Ms. Matildy, except as noted, has your  
23 testimony been consistent with the [DOT] and its companion  
publications?

24 VE: Yes, it has.

25 AR 74-76.

26 In his decision, the ALJ stated that “[p]ursuant to SSR-00-4p, ... the [VE]’s  
27 testimony is consistent with the information contained in the [DOT].” AR 33. That  
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1 statement is incorrect. The hypothetical person presented to the VE, consistent with  
2 Plaintiff's RFC, can perform only "occasional reaching over shoulder level with the  
3 right and left upper extremities[.]" AR 25. "Reaching," within the meaning of the  
4 DOT, is defined as "[e]xtending hand(s) and arm(s) in *any direction*," and therefore  
5 includes overhead reaching. *See Selected Characteristics of Occupations Defined*  
6 in the DOT, Appendix C (1993) (emphasis added); *Mkhitarian v. Astrue*, 2010 WL  
7 1752162, at \*3 (C.D. Cal. Apr. 27, 2010) ("reaching" in the DOT includes overhead  
8 reaching). The jobs identified by the VE all require "frequent" reaching. *See* DOT  
9 # 739.687-182; DOT # 017.684-010; DOT # 690.685-194. Thus, the ALJ's finding  
10 that the VE's testimony is consistent with the DOT is erroneous. *Rounds*, 795 F.3d  
11 at 1183 ("Because the ALJ did not recognize the apparent conflict between Rounds'  
12 RFC and the demands of Level Two reasoning, the VE did not address whether the  
13 conflict could be resolved. As a result, we 'cannot determine whether substantial  
14 evidence supports the ALJ's step-five finding.'") (quoting *Massachi v. Astrue*, 486  
15 F.3d 1149, 1154 (9th Cir. 2007)).

16 This action is similar to *Winder v. Astrue*, 2013 WL 489611 (C.D. Cal. Feb.  
17 6, 2013). In *Winder*, the hypothetical posed to the VE (and the ALJ's eventual RFC  
18 assessment) limited the plaintiff to occasional overhead reaching. *Id.* at \*2; *see also*  
19 SSR 83-10, 1983 WL 31251, at \*5 ("occasional" means very little up to one-third  
20 of the time, *i.e.*, "no more than about 2 hours of an 8-hour workday"). In response,  
21 the VE testified that the plaintiff could perform jobs that require frequent reaching,  
22 and that his testimony was consistent with the DOT. *Winder*, 2013 WL 489611, at  
23 \*2. On appeal from an administrative non-disability determination, the court noted  
24 that it is not clear if the DOT "'requirements include reaching above shoulder level,  
25 and this is exactly the sort of inconsistency the ALJ should have resolved with the  
26 expert's help.'" *Id.* (citing *Prochaska v. Barnhart*, 454 F.3d 731 (7th Cir. 2006)).  
27 "Under these circumstance," the court continued, "the ALJ is required to determine  
28 whether a conflict exists and, if so, 'whether the [VE]'s explanation for the conflict

1       is reasonable and whether a basis exists for relying on the expert rather than the  
 2 [DOT].” *Id.* at \*3 (quoting *Massachi*, 486 F.3d at 1153 & n.19) (citing SSR 00-4p,  
 3 2000 WL 1898704, at \*3). Because “[t]he VE did not specifically address whether  
 4 [the plaintiff’s] limitation on overhead reaching would preclude any of the jobs he  
 5 identified[,]” the court concluded that “the record d[id] not contain any basis for the  
 6 VE’s deviations[,]” and thus, that it could not “determine whether the ALJ properly  
 7 relied upon his testimony.” *Id.* The court therefore remanded the case “so the ALJ  
 8 [could] conduct the appropriate inquiries.” *Id.* (citing *Massachi*, 486 F.3d at 1154).

9           The Commissioner argues that Plaintiff’s counsel failed to point to a conflict  
 10 when “the ALJ invited him to cross-examine the VE … after the latter testified that  
 11 his testimony was consistent with the DOT,” and thus, under “these circumstances,  
 12 where there was an ALJ inquiry and unchallenged VE answer, ‘the ALJ met his  
 13 obligations under *Massachi* and SSR 00-4p to investigate potential conflicts with  
 14 the DOT, and his reliance on the VE testimony was … proper.’” Memorandum in  
 15 Support of Defendant’s Answer at 6 (citing *Wentz v. Comm’r Soc. Sec. Admin.*, 401  
 16 F. App’x 189, 191 (9th Cir. 2010)). However, it is not counsel’s burden to identify  
 17 conflict. Rather, “[t]he Ninth Circuit has cited to SSR 00-4p as ‘explicitly requiring  
 18 that the *ALJ* determine whether the expert’s testimony deviates from the [DOT] and  
 19 whether there is a reasonable explanation for any [such] deviation.’” *Richardson v.*  
 20 *Astrue*, 2012 WL 1425130, at \*4 (C.D. Cal. Apr. 25, 2012) (emphasis added)  
 21 (citing *Massachi*, 486 F.3d at 1153). Also, *Wentz* is distinguishable from this case.

22           In *Wentz*, the court found that the ALJ met his obligations under *Massachi*  
 23 and SSR 00-4p, noting that “the ALJ asked the VE to identify any *conflict* between  
 24 her testimony and the DOT, and the VE identified none.” *Wentz*, 401 F. App’x at  
 25 191 (emphasis added). Here, the ALJ asked the VE if her testimony was *consistent*  
 26 with the DOT, not whether it conflicted with the DOT. Cf. *Richardson*, 2012 WL  
 27 1425130, at \*3-4 (noting the ALJ asked the VE whether her opinion was *based on*  
 28 the DOT, and finding that “the ALJ erred … by not directly asking the VE whether

1 her testimony *conflicted with* the DOT as required” by SSR 00-4p and *Massachi*)  
 2 (emphasis added). Wentz also fails “to address the ALJ’s obligations … where, as  
 3 in this case, there was in fact an apparent conflict between the VE’s testimony and  
 4 the DOT.” *Norris v. Colvin*, 2013 WL 5379507, at \*3 (C.D. Cal. Sept. 25, 2013).  
 5 “Indeed, it appears that such an obligation never became an issue in *Wentz* because  
 6 there was no such conflict.” *Id.* (citing *Gonzales v. Astrue*, 2012 WL 2064947, at  
 7 \*3 (E.D. Cal. June 7, 2012) (“The Ninth Circuit’s affirmation of *Wentz* appears  
 8 predicated on the district court’s finding that there was no inconsistency or apparent  
 9 inconsistency between the VE’s testimony and the DOT.”)).

10 In light of the apparent conflict between plaintiff’s “occasional reaching over  
 11 shoulder level with the right and left upper extremities” limitation and the DOT’s  
 12 description of jobs requiring reaching in general, the ALJ should have asked the VE  
 13 if Plaintiff could perform the jobs in spite of his limitations. *See Zamora v. Astrue*,  
 14 853 F. Supp. 2d 1048, 1057 (D. Or. 2011) (“Here, the VE testified that the number  
 15 of electronics production jobs he provided included only sedentary jobs, though the  
 16 job is classified as light in the DOT. He also testified that, except for the deviations  
 17 from the DOT that he had indicated, his testimony was consistent with the DOT.  
 18 The ALJ was entitled to rely on the VE’s testimony concerning the numbers of the  
 19 electronics production jobs in the category he cited existed at the sedentary level.”).  
 20 Because the ALJ adopted the VE’s finding without addressing the apparent conflict,  
 21 and gave no explanation for the deviation, remand is warranted. *Rounds*, 795 F.3d  
 22 at 1184 (“The ALJ’s failure to reconcile this apparent conflict was not harmless”);  
 23 *see also Zavalin v. Colvin*, 778 F.3d 842, 848 (9th Cir. 2015) (a court cannot affirm  
 24 an ALJ’s decision on grounds not supported by the record).

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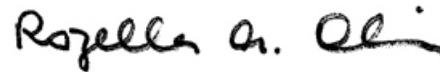
1 V.  
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3 **CONCLUSION**  
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5 IT IS ORDERED that Judgment shall be entered REVERSING the decision  
6 of the Commissioner denying benefits, and REMANDING the matter for further  
7 proceedings consistent with this Order.  
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9 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
10 Order and the Judgment on counsel for both parties.  
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12 DATED: October 28, 2015  
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16 ROZELLA A. OLIVER  
17 UNITED STATES MAGISTRATE JUDGE  
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20 **NOTICE**  
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22 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,  
23 LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**  
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